



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Docket No. 22-7
Adam T. Rodman, P.A.
Decision and Order**

On November 8, 2021, a former Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Adam T. Rodman, P.A. (hereinafter, Respondent) of Dedham, Massachusetts. OSC, at 1 and 3. The OSC proposed the revocation of Respondent's Certificate of Registration No. MR0956586. *Id.* at 1. It alleged that Respondent "[does] not have authority to dispense or prescribe controlled substances in the Commonwealth of Massachusetts, the state in which [he is] registered with the DEA." *Id.* (citing 21 U.S.C. § 824(a)(3)).

Specifically, the OSC alleged that on or about June 30, 2021, the Massachusetts Drug Control Program accepted Respondent's voluntary surrender of his state controlled substances registration for schedules II through V. *Id.* at 2. According to the OSC, Respondent retained authority in schedule VI, which does not include federally-scheduled drugs. *Id.* (citing Mass. Gen. Laws ch. 94C, § 2).

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2-3 (citing 21 C.F.R. § 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. § 824(c)(2)(C)).

By letter dated December 1, 2021, Respondent timely requested a hearing.¹ Request for Hearing, at 1. In his Request for Hearing, Respondent objected to the revocation of his DEA

¹ The Request for Hearing was filed on December 1, 2021. Order Directing the Government to File Evidence Regarding Its Lack of State Authority Allegation and Briefing Schedule dated December 2, 2021, at 1. I find that

registration and stated: “The basis for my objection is, in part, that my Massachusetts Controlled Substance Registration has not been suspended, revoked, or denied, and therefore 21 U.S.C. § 824(a)(3) is not applicable.” *Id.*

The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Teresa A. Wallbaum (hereinafter, the ALJ). On December 2, 2021, the ALJ issued an Order Directing the Government to File Evidence Regarding Its Lack of State Authority Allegation and Briefing Schedule (hereinafter, Briefing Schedule). On December 15, 2021, the Government timely filed its Notice of Filing of Evidence and Motion for Summary Disposition (hereinafter, Government’s Motion). Order Granting the Government’s Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge dated January 27, 2022 (hereinafter, Recommended Decision or RD), at 2. In its Motion, the Government argued that because Respondent lacks authority to handle controlled substances in Massachusetts, the state in which he is registered with the DEA, his DEA registration should be revoked. Government’s Motion, at 2-3. On January 18, 2022, Respondent timely² filed his Opposition to Government’s Motion for Summary Disposition (hereinafter, Respondent’s Opposition). RD, at 2. In his Opposition, Respondent argued that the plain language of 21 U.S.C. § 824(a)(3) does not apply to him and that his DEA registration should not be revoked because his Massachusetts Controlled Substance Registration was not suspended, revoked, or denied, but instead voluntarily surrendered. Respondent’s Opposition, at 2-4.

On January 27, 2022, the ALJ granted the Government’s Motion, finding that “[t]here is no genuine issue of material fact in this case.” RD, at 6. Further, the ALJ found that Respondent’s argument regarding the plain language of 21 U.S.C. § 824(a)(3) was “at odds with

the Government’s service of the OSC was adequate and that the Request for Hearing was timely filed on December 1, 2021.

² Respondent was granted an extension of time to file a reply to the Government’s Motion. *See* Order Amending Briefing Schedule dated December 23, 2021.

clear Agency precedent on the issue and must therefore fail,” because “regardless of how or why [Respondent] lost his authority to handle controlled substances under state law, he has lost it.” *Id.* at 7. Accordingly, the ALJ recommended that Respondent’s DEA registration be revoked and that any application to renew or modify his registration, or any applications for any other DEA registrations in Massachusetts, be denied based on Respondent’s lack of state authority to handle controlled substances. *Id.* at 8. By letter dated February 22, 2022, the ALJ certified and transmitted the record to me for final Agency action and advised that neither party filed exceptions.

I issue this Decision and Order based on the entire record before me. 21 C.F.R. § 1301.43(e). I make the following findings of fact.

FINDINGS OF FACT

Respondent’s DEA Registration

Respondent is the holder of DEA Certificate of Registration No. MR0956586 at the registered address of 983 Providence Highway, Dedham, Massachusetts 02026. Government’s Motion, Declaration of [Diversion Investigator (DI)], at 1. Pursuant to this DEA registration, Respondent is authorized to dispense controlled substances in schedules II through V as a mid-level practitioner. *Id.* Respondent’s registration expires on April 30, 2024. *Id.*

The Status of Respondent’s State License

On June 30, 2021, the Massachusetts Drug Control Program accepted Respondent’s voluntary surrender of his Massachusetts controlled substances registration for Massachusetts drug schedules II through V and stated that Respondent was “no longer authorized to prescribe, distribute, possess, dispense or administer controlled substances from schedules II through V in the Commonwealth of Massachusetts.” Government’s Motion, Declaration of DI, Exhibit (hereinafter GX) A. The Massachusetts Drug Control Program also clarified that Respondent’s Massachusetts controlled substances registration would retain authorization for schedule VI medications only. *Id.*

On August 30, 2021, the Massachusetts Board of Registration of Physician Assistants (hereinafter, the Board) entered into a Consent Agreement for Probation (hereinafter, Consent Agreement) with Respondent regarding Respondent's Massachusetts Physician Assistant license. Respondent's Opposition, Exhibit (hereinafter, RX) A, at 1-2. By signing the Consent Agreement, Respondent admitted that on various dates between October 4, 2018, and September 30, 2019, he had diverted controlled substances. *Id.* at 2. Specifically, Respondent admitted that for multiple patients, he had examined them, written them prescriptions for controlled substances, and asked them to bring him the filled prescriptions. *Id.* The Consent Agreement placed Respondent's Massachusetts Physician Assistant license on probation for two years subject to various requirements and conditions. *Id.* at 2-8.

According to online records for Massachusetts, of which I take official notice, Respondent's Massachusetts controlled substances registration is current, but authorized only for drug schedule VI.³ Massachusetts Health Professions License Verification Site, <https://madph.mylicense.com/verification> (last visited date of signature of this Order). Further, online records for Massachusetts list Respondent's Massachusetts Physician Assistant license as on probation. *Id.*

Accordingly, I find that Respondent is not currently licensed to dispense controlled substances in schedules II through V in Massachusetts, the state in which he is registered with the DEA.

DISCUSSION

³ Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Respondent may dispute my finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.”⁴ With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he

⁴ Respondent argues that 21 U.S.C. § 824(a)(3) only refers to revocation, suspension, or denial; however, the Agency has consistently stated that the central issue is whether or not the registrant is “currently authorized to handle controlled substances in the state,” *James Hooper*, 76 Fed. Reg. 71,371 (2011) (quoting *Anne Lazar Thorn*, 62 Fed. Reg. 12,847, 12,848 (1997)); thus, it is of no consequence whether the registrant’s state license was revoked or suspended, has expired, or was voluntarily surrendered. *See, e.g., Alex E. Torres, M.D.*, 87 Fed. Reg. 3,352 (2022)(voluntary surrender of medical license); *Tel-Pharmacy*, 87 Fed. Reg. 2,904 (2022)(state pharmacy license expired); *Humberto A. Florian, M.D.*, 86 Fed. Reg. 52,203 (2021)(state medical license revoked); *Javaid A. Perwaiz, M.D.*, 86 Fed. Reg. 20,732 (2021)(state medical license expired); *Michael Thomas Watkins, M.D.*, 85 Fed. Reg. 27,246 (2020) (voluntary agreement to cease practicing medicine in Massachusetts). What is of consequence is the fact that Respondent is no longer authorized to handle controlled substances in the Commonwealth of Massachusetts, where he is registered with the DEA. Furthermore, the letter of acceptance of the consent agreement from the Massachusetts Drug Control Program implies that Respondent may only re-apply for such a registration in September 2023. *See* GX A, at 1.

is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

According to the Massachusetts Controlled Substances Act, “every person who . . . dispenses . . . any controlled substance within the commonwealth shall . . . register with the commissioner of public health, in accordance with his regulations.” Mass. Gen. Laws ch. 94C, § 7(a) (Westlaw, current through Chapter 14 of the 2022 2nd Annual Session). Further, “[a] prescription for a controlled substance may be issued only by a practitioner who is 1) authorized to prescribe controlled substances; and 2) registered pursuant to the provisions of [the Massachusetts Controlled Substances Act].” *Id.* at § 18(a).

Here, the undisputed evidence in the record is that Respondent is not authorized to dispense controlled substances in schedules II through V in Massachusetts.⁵ Further, I agree with the ALJ that it is of no consequence that Respondent’s Massachusetts controlled substances registration for drug schedules II through V was voluntarily surrendered rather than revoked or suspended. Thus, because Respondent is not authorized to prescribe controlled substances in schedules II through V in Massachusetts, Respondent is not eligible to maintain a DEA registration. Accordingly, I will order that Respondent’s DEA registration be revoked.

⁵ As previously discussed, Respondent is only authorized to dispense controlled substances in schedule VI in Massachusetts. *See supra*. According to the Massachusetts Controlled Substances Act, schedules I through V incorporate the five schedules of controlled substances under the CSA, with schedule VI consisting of “all prescription drugs not included in the first five schedules.” Mass. Gen. Laws ch. 94C, § 2(a) (Westlaw, current through Chapter 14 of the 2022 2nd Annual Session). As such, Respondent does not have state authority to dispense CSA controlled substances in Massachusetts.

ORDER

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. MR0956586 issued to Adam T. Rodman, P.A. Further, pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of Adam T. Rodman, P.A. to renew or modify this registration, as well as any other pending application of Adam T. Rodman, P.A. for additional registration in Massachusetts. This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

Anne Milgram,
Administrator.

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